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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,078	11/29/2000	Paul A. Dvorak	00-422	9640

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PEORIA, IL 616296490

EXAMINER

UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/726078

Applicant(s)

Dvorak et al

Examiner

Underwood

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 06/04/02
- ☒ This action is FINAL
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-29 is/are pending in the application.
- Of the above claim(s) NONE is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-29 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 5 & 7
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

**Detailed Action**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9, 11, 16, 18 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wallberg.

The lower end of 9 comprises a latch member.

3. Claim 28 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Jones or newly cited Horton.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg in view of Doering et al.

It is well known to use slots in connections as shown by Doering at 69. This arrangement prevents binding. It would have been obvious to provide a slot as claimed in Wallberg in view of the teaching in Doering. *because*

7. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

It is conventional to provide various controls on a construction machine to divert hydraulic fluid to various cylinders from the main hydraulic circuit to perform different functions. *It* This arrangement cannot serve as a basis for patentability.

8. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg in view of Jones or newly cited Horton.

It would have been obvious to divert fluid from the lifting cylinders in Wallberg to the latch cylinder in view of the teaching in either Jones or Horton. Note this is not a new ground of rejection since the secondary references are added to support a position of conventionality set forth by the examiner in the first Office action and reiterated in the preceding paragraph. Applicants contest this conventionality in their response.

9. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

It is conventional to control the cylinders together by using one handle. The examiner takes notice of this convention. It would have been obvious to control the cylinders in Wallberg with one handle.

10. Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

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The difference between the elements in claim 19 and Wallberg is the location of the pivots for 9 and 6 on pivot member 7. Applicants' points are switched versions of pivots for 9 and 6. Such a switched arrangement provides no unobvious result over the arrangement in Wallberg and as such is deemed an obvious alternate design arrangement.

Regarding claim 21, the remarks in paragraph 9 above are herein repeated.

Regarding claim 26, the remarks in paragraph 8 above are herein repeated.

11. Claims 1-7, 9, 10 and 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albright or Youngers in view of Wallberg.

It would have been obvious to substitute for the hydraulic actuator in Albright separate cylinders pivoted to each of 54 and 56 as claimed or add cylinders to Youngers in view of the teaching in Wallberg.

Regarding claims 12 and 21, the remarks in paragraph 9 above are herein repeated.

Regarding claims 10, 17 and 26, the remarks in paragraph 8 above are herein repeated.

Regarding claim 19, the remarks set forth in paragraph 10 above are therein repeated.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albright or Youngers in view of Wallberg as applied to claim 1 above, and further in view of Jones or newly cited Horton.

It would have been obvious to divert fluid from the lifting cylinders in Albright or Youngers to the latch cylinders in view of the teaching in either Jones or Horton.

13. Applicants' argument regarding his insertion of "substantially vertical" into claims 1 and 19 has been carefully considered but is not deemed persuasive sine the latch members in

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Wallberg, Albright and Youngers are deemed to move substantially vertical. Particularly note Figure 3 in Wallberg.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1113.

Underwood/kl  
August 23, 2002

*Donald W. Underwood* 08/27/02  
DONALD W. UNDERWOOD  
PRIMARY EXAMINER